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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,925	04/09/2001	Hiroshi Kajiware	35.C12124 REI	5185

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FITZPATRICK CELLA HARPER & SCINTO
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NEW YORK, NY 10112

EXAMINER

CHEN, WENPENG

ART UNIT	PAPER NUMBER
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2624

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/827,925

Applicant(s)

KAJIWARA, HIROSHI

Examiner

Wenpeng Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004 and 01 April 1010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-13 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/10/2004 has been entered.

Examiner's Statement

2. A final review by Ken Wieder, SPRE 2600, concluded that the present cases has following issues:

- a. A supplemental declaration is needed for the amendment filed 7/19/04.
- b. The assent of assignee and certification under 37 CFR 3.73(b) filed 12/23/02 is defective. It is not signed by someone having apparent authority to sign on behalf of assignee and no statement that they are empowered to sign was included. See MPEP 324.
- c. It appears that the original declaration filed 7/21/03 is not signed. Also, at paragraph one of the declaration, the amendment date must be completed.

(Items 2a and 2c above can be corrected by a single declaration.)

Rejections Based on Defective Oath/Declaration

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3. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

(1) The original declaration filed 7/21/03 was not signed.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

(2) A supplemental declaration is needed for the amendment filed 7/19/04.

4. Claims 1-8 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

“Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.”

See MPEP § 1414.01.

Objections

5. The person who signed the submission establishing ownership interest, in the assent of assignee and certification under 37 CFR 3.73(b) filed 12/23/02, is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

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This application is still objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01. A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

Examiner's Statement with regard to Claims 1-8

6. The amendment to Claims 1, 7, and 8 as presently presented defines the reissue Claims 1-8 the same scope as their corresponding patent claims. Therefore, if the Applicants would file a corrected reissue declaration, it would overcome the rejections to Claims 1-8 under 35 U.S.C. 251, set forth in paper #11 mailed on 4/15/2004, as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based.

7. The amended Claims 1-8 filed on 7/19/2004 are not rejectable over the prior art.

The reason for this conclusion is similar to that set forth in the original application. The prior art fails to teach apparatus of Claim 1, method of Claim 7, and medium of Claim 8 which specifically comprise the limitations of:

-- judging an appearing prediction error difference and an unappearing prediction error difference on the basis of the first prediction error difference, wherein the second prediction error difference is not used in the judging operation;

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-- changing a first relationship between prediction error difference and encoding data to a second corresponding relationship between prediction error difference and encoding data according to a result obtained in the judging operation;

-- encoding means for encoding the second prediction error difference on the basis of the appearing and unappearing prediction error differences judged by said judging means and one of the first and second corresponding relationships to obtain corresponding encoding data.

Examiner's Statement of Reasons for Allowance

8. Claims 9-13 are allowed.

The examiner's statement of reasons for allowance of Claims 9-13 has been provided in papers #5.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wenpeng Chen whose telephone number is 571-272-7431. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular


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communications and 571-273-8300 for After Final communications. TC 2600's customer service number is 571-272-2600.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

Wenpeng Chen
Primary Examiner
Art Unit 2624

January 9, 2007

A handwritten signature in black ink, appearing to read 'Wenpeng Chen', written in a cursive style.